TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 242.

THE PHILADELPHIA AND BALTIMORE CENTRAL RAILROAD COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 9, 1878.

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1 I.—*Petition.*—*Filed May* 22, 1877.—*J. R.*

In the Court of Claims.

THE PHILADELPHIA AND BALTIMORE CENTRAL Railroad Company *vs.* THE UNITED STATES. } No. 11592.

To the honorable justices of the Court of Claims:

The Philadelphia and Baltimore Central Railroad Company respectfully represent:

First. That it is a corporation duly organized under the laws of the States of Pennsylvania and Maryland, and having its principal place of business in the city of Philadelphia.

Second. That the said company, ever since the first day of July, eighteen hundred and seventy-three (1873), and until the thirty-first day of March, eighteen hundred and seventy-seven (1877), has been and is still the proprietor as owner of forty-six (46) miles and lessee of eleven (11) miles of the line of railroad between Port Deposit, in the State of Maryland, and Lamokin, in the State of Pennsylvania, a distance of fifty-seven (57) miles, with a right to have the cars of said company run from the junction at Lamokin to the said city of Philadelphia, fifteen (15) miles, upon the track of the Philadelphia, Wilmington and Baltimore Railroad Company, paying said Philadelphia, Wilmington and Baltimore Railroad Company for same.

2 Third. That during the said period, viz, from July first, eighteen hundred and seventy-three (1873), to March thirty-first, eighteen hundred and seventy-seven (1877), the said company (the complainant) transported the United States mails and mail-route agents, in the cars of the said company, between the said city of Philadelphia and the said town of Port Deposit, over and upon the said route daily, each way (except Sunday), over its own road between Port Deposit and Lamokin, and by paying the Philadelphia, Wilmington and Baltimore Railroad Company for the running of the cars of the Philadelphia and Baltimore Central Railroad Company over the track of the said Philadelphia, Wilmington and Baltimore Railroad Company, between Lamokin and Philadelphia; the postal cars and route agents in all cases running through, between Philadelphia and Port Deposit, as an independent mail route (in no way consolidating with the other route over the Philadelphia, Wilmington and Baltimore Railroad Company's track), which service was performed by the Philadelphia and Baltimore Central Railroad Company under the act of Congress of March 3d, 1873, by which the Postmaster-General is authorized and directed to readjust the compensation hereafter to be paid for the transportation of mails on "railroad routes," upon the conditions and the rates hereinafter mentioned, to wit: "That the mails shall be conveyed with due frequency and speed; that sufficient and suitable room, fixtures, and furniture, in a car or apartment, properly lighted and warmed, shall be furnished for route agents to accompany and distribute the mails, and that the pay per mile per annum shall not exceed the following rates, viz: on routes carrying their whole length an average weight of mails per day of two hundred (200) pounds, fifty dollars ($50); five hundred (500) pounds, seventy-five dollars ($75); one thousand (1,000) pounds, one hundred dollars ($100); one thousand five hundred

3 (1,500) pounds, one hundred and twenty-five dollars ($125); two

thousand (2,000) pounds, one hundred and fifty dollars ($150); three thousand and five hundred (3,500) pounds, one hundred and seventy-five dollars ($175); five thousand (5,000) pounds, two hundred dollars ($200); and twenty-five dollars ($25) dollars additional for every additional two (2) thousand pounds; the average weight to be ascertained in every case by the actual weighing of the mails for such a number of successive working days, not less than thirty, at such times, after June 30th, 1873, and not less frequently than once in every four years, and the result be stated and verified in such form and manner as the Postmaster General may direct."

That the Post-Office Department construed the said act of Congress in such manner as to fix the rates therein provided and mentioned for transportation of the mails by railroad in all cases, and the said Department, from the first day of July, eighteen hundred and seventy-three, (1873,) until the present time, has, as a rule, so construed said statute, and has acted in accordance with such construction in its dealings with railroad companies for the transportation of the mails.

Fourth. That the said Philadelphia and Baltimore Central Railroad Company is a distinct organization, having its own office and officers, and doing its own business separate from and independent of the Philadelphia, Wilmington and Baltimore Railroad Company; and that no officer of the Philadelphia, Wilmington and Baltimore Railroad Company is an officer of the Philadelphia and Baltimore Central Railroad Company.

Fifth. That there is due and unpaid to the said company, from the United States, for said services in the transportation of the said mails
4 the sum of three thousand eight hundred and eighty-five dollars ($3,885), and the said company is justly entitled to that amount after allowing all just credits and offsets, and the said company prays judgment for the same.

The complainant further states that no assignment or transfer of the foregoing claim of the said company against the United States, or any part thereof, or any interest therein, has been made, and that the same belongs to the said company.

J. F. FARNSWORTH,
Attorney for Complainant.
A. J. LAMBORN, [SEAL.]
Acting President Philad'a & Balt. Central R. R. Co.

The undersigned, a resident of Philadelphia, and acting president of the said Philadelphia and Baltimore Central Railroad Company, being duly sworn, doth depose and say that he has read the foregoing petition and that he believes the same to be true.

A. J. LAMBORN,
Acting President Philad'a & Balt. Central R. R. Co.

Sworn to and subscribed before me this twenty-first day of May, A. D. 1877.

[SEAL.] ALBERT HAVERSTICK,
Notary Public.

The post-office address of complainant is Philadelphia, Pennsylvania; that of the attorney, Washington, D. C.

5 II.—*Traverse.*—*Filed May* 31, 1877.

And now comes the Attorney-General, on behalf of the United

States, and makes answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, denies each and every the allegations therein contained, and calls for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the United States are indebted to the said claimant in the sum of three thousand eight hundred and eighty-five dollars, says that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said government, denies the said allegation.

THOMAS SIMONS,
Assistant Attorney-General.

6 III.—*Finding of facts and conclusion of law.*

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I. At all the times and periods mentioned in these findings, the Philadelphia, Wilmington and Baltimore Railroad Company was the proprietor of and operated a railroad extending from Philadelphia to Baltimore. Chester is a station on this railroad, within the limits of the State of Pennsylvania, about fourteen miles from Philadelphia, and Lamokin is a junction on the same road, about half a mile beyond Chester, on the way thence toward Baltimore.

II. During the same times and periods the Philadelphia and Baltimore Central Railroad Company, the claimants, controlled fifty-nine and one-quarter miles of railway between the said junction at Lamokin and Port Deposit, in the State of Maryland, and operated the same for its own benefit, with its own engines and cars, running from the said station at Chester to Port Deposit.

III. The line between Philadelphia and Baltimore, operated by the Philadelphia, Wilmington and Baltimore Railroad Company, was, during said times and periods, known at the Post-Office Department as Route No 3501, and the line between Chester (or Lamokin) and Port Deposit, operated by the said Philadelphia and Baltimore Central Railroad Company, was, during said times and periods, up to 1876, known in said department as Route No. 2408. In the latter year it was styled Route 8008, by which designation it has since been known.

IV. Mails had been regularly transmitted over said Route 2408 by the said Philadelphia and Baltimore Central Railroad Company prior to September 14, 1872. On that day a contract was made by the Postmaster General with that company for carrying the mails between Chester and Port Deposit and back, twelve times a week, on Route 2408, at an agreed rate, the said contract to expire in 1876. In 1876 it was renewed, the designation of the route being changed as above stated.

V. After the act of March 3, 1873 (17 Stat. at L., 558) took effect, the Postmaster-General required the mails between Philadelphia and Port Deposit to be made up at Philadelphia and Port Deposit, respectively and to be transported from one point to the other in apartments in cars properly lighted and warmed, according to the provisions of said act, under charge of route mail agents traveling the whole distance between the two termini. Under this requirement such cars with apartments

were carried on trains running as continuous trains between
7 Philadelphia and Port Deposit, known as the Philadelphia and Baltimore Central Company's train, and independent of the ordinary service on the main trunk line of the Philadelphia, Wilmington and Baltimore Railroad. Mail agents on such cars received and delivered mails at various stations between Port Deposit and Philadelphia on both lines. The apartment cars for the mail and route agents were furnished by the Philadelphia and Baltimore Central Company, to and from Philadelphia and Port Deposit. The performance of the service thus required by the Postmaster General commenced on the 1st day of July, 1873, and continued until and including the 7th March, 1877.

VI. The Postmaster-General readjusted from time to time, in the manner required by the statute, the compensation for the said last-named transportation of the mails over the said Philadelphia and Baltimore Central Railroad Company. The several readjustments are shown in the following copies of the orders of recognition of service:

Contract-term, 1872 to 1876. Route 2408. Chester to Port Deposit, 59.25 miles. Philidelphia & Baltimore Central R. R.

Copy of Orders.

Sept. 14, 1872.—Contract with the Phila. & Balt. Central R. R. Co., Henry Wood, pres'd't, Philadelphia, for conveying the mails between Chester and Port Deposit, 59¼ miles and back, twelve times a week, at $4,443.75 per annum, being at the rate of $75 per mile per annum, from July 1, 1872, to June 30, 1876.

Rescinded.

Jan. 8, 1873.—Rescind order of Sept. 14, 1872, and recognize service of the Phila. & Balt. Central R. R. Co. in conveying the mails between Chester and Port Deposit for the quarter ended September 30, 1872, at the rate of $4,443.75 per annum, and refer to Auditor to pay, subject to fines and deductions.

April 1, 1873.—Same order as above for quarter ended March 31, 1873.

July 1, 1873.—Service recognized as above for quarter ended June 30, 1876.

Oct. 4, 1873.—Recognize service as above for quarter ended Sept. 30, 1872, with the understanding that the rate of compensation shall be subject to readjustment and be determined according to the grade of the service, as provided by the act of March 3d, 1873.

Jan. 6, 1874.—Recognize service of the Phila. & Baltimore Central R. R. Co. in conveying the mail between Chester and Port Deposit for the quarter ended Dec. 31, 1873, at the rate of $4,473.75 per annum, and refer to Auditor to pay, subject to fines and deductions.

Pay fixed at above rate for remainder of contract-term.

Modify.

Jan. 21, 1874.—Modify order of Jan. 6, 1874, so as to state pay at $4,443.75 per annum, instead of $4,473.75.

Apl. 2, 1874.—Recognize service of the Phila. & Baltimore Central R. R. Co., in conveying the mail between Chester and Port Deposit, for the quarter ended March 31, 1874, at the rate of $3,555 per annum, and refer to Auditor to pay, subject to fines and deductions. Modify orders of Oct. 4, 1872, and Jan. 6, 1874, so as to pay at the same rate.

July 2, 1874.—Service recognized at same rate for quarter ended June 30, 1874.

Mod.

8 *Oct.* 1, 1874.—Recognize at $3,555 per annum (being $60 per mile per annum), for quarter ended Sept. 30, 1874, subject to fines and deductions.

Mod.

Oct. 2, 1874.—Modify orders of April 2d, July 2d, and Sept. 29, 1874, so as to pay at the rate of $4,858.50 per annum (being at the rate of $82 per mile per annum), pay having been again readjusted.

Jan. 6, 1875.—Recognize service of the Phila. & Balt. Central R. R. Co. in carrying the mail between Chester and Port Deposit, for the quarter ended Dec. 31, 1874, at the rate of $4,858.50 per annum, being $82 per mile per annum.

April 2, 1875.—(No. 1809.) Recognize service of the Phila. & Balt. Central R. R. Co. in carrying the mail between Chester and Port Deposit, for the quarter ended March 31, 1875, at the rate of $4,858.50 per annum (being $82 per mile per annum), and refer to Auditor to pay, subject to fines and deductions.

July 2, 1875.—(No. 4347.) Recognize service of the Phila. & Balt. Central R. R. Co. in carrying the mail between Chester and Port Deposit, for the quarter ended June 30, 1875, at the rate of $4,858.50 per annum (being $82 per mile per annum), and refer to Auditor to pay, subject to fines and deductions.

Oct. 2, 1875.—(No. 6776.) Recognize service of the Phila. & Balt. Central R. R. Co. in carrying the mail between Chester and Port Deposit, for the quarter ended Sept. 30, 1875, at the rate of $4,858.50 per annum (being $82 per mile per annum), and refer to Auditor to pay, subject to fines and deductions.

Jan. 3, 1876.—(No. 193.) Authorize the Auditor of the Treasury for the Post-Office Department to pay the Phila. & Balt. Central R. R. Co. quarterly for carrying the mails between Chester and Port deposit, from Oct. 1, 1875, to June 30, 1876, at the rate of $4,858.50 per annum (being $82 per mile per annum), unless otherwise ordered, subject to fines and deductions.

Contract-term, 1876 to 1880. Route 8008 (2408 old No.)

Oct. 14, 1876.—(No. 5618.) Authorize the Auditor of the Treasury for the Post-Office Department to pay the Philadelphia & Baltimore Central R. R. Co. quarterly for carrying the mails between Chester and Port Deposit, from July 1, 1876, to June 30, 1877, at the rate of $4,372.65 per annum (being $73.80 per mile per annum), unless otherwise ordered, subject to fines and deductions under the act of July 12, 1876.

Service, 12 trips per week.

VII. Under the operation of the same statute the Postmaster-General required the Philadelphia, Wilmington and Baltimore Railroad Company to transport mails in postal cars and in apartments in cars over its main trunk-line between Philadelphia and Baltimore and intervening stations, from the 1st of July, 1873, until and after the 8th March, 1877, and from time to time in like manner readjusted the compensation therefor. In each adjustment the mails carried as aforesaid from Philadelphia to Port Deposit were regarded and treated as carried by the Philadelphia, Wilmington and Baltimore Company, on its road, as far as Chester, and that company was paid for the transportation of the same at the average on its own line, which was less under the statute than

the average on the line from Chester to Port Deposit, as shown in Finding IX. The claimants were paid only for the said transportation between Chester and Port Deposit.

9 VIII. The claimants received and accepted the payment for such transportation between Chester and Port Deposit without objection, and without making claim to payment for the transportation between Philadelphia and Chester until December 4, 1875, when his attorney addressed the following letter to the Post-Office Department:

WASHINGTON, D. C., *December* 4, 1875.

Hon. J. N. TYNER,
Second Assistant Postmaster-General:

MY DEAR SIR: I am requested by the managers of the Philadelphia and Baltimore Central Railroad Company to call your attention to an error in the adjustment of the mail pay of said road (Route No. 2408).

They are carrying an average of 639 pounds per day between Philadelphia and Port Deposit, a distance of 71 miles, giving an eighth of a baggage-car and a daily line making 20¼ trips per week.

Their pay was decided by you to be but 59¼ miles at $75.00 per mile, instead of service performed by them the entire distance.

The parties in interest feel that there is no warrant for this in law or equity, and respectfully ask that you will have the matter readjusted upon a just and equitable basis, as was done by the New York and New Haven Road under similar circumstances.

I have the honor to be, very respectfully, yours,

W. S. LINCOLN.

812 *F st., N. W., P. O. Lock-Box* 138.

To this letter the Post-Office Department made the following reply:

WASHINGTON, D. C., *December 8th*, 1875.

SIR: Referring to yours of the 4th instant, I beg leave to state that Route 2408 does not appear by the records of the department to begin at Philadelphia, but at Chester; and in the latest returns submitted by that company to the department, the route is stated to be from Chester to Port Deposit.

All mail service between Philadelphia and Chester is performed on the main line of the Philadelphia, Wilmington and Baltimore Railroad, and full compensation for the service is made to the proprietors of that line.

Respectfully,

J. C. SLATER,
Acting Second Asst. Postmaster-General.

To W. S. LINCOLN, *Attorney*,
812 *F street, N. W., Lock-Box* 138, *P. O. Washington, D. C.*

IX. This case is transmitted to this court by the Postmaster-General under the authority conferred upon him by section 1063 of the Revised Statutes. Among the papers presented to the court is the following agreed statement of facts:

Agreed facts.

POST-OFFICE DEPARTMENT,
Washington, D. C., November 10, 1877.

To the Hon. Chief Justice and Judges of the Court of Claims:

In the case of the Philadelphia and Baltimore Central Railroad Company vs. The United States, No. 11592, I transmit herewith, to be made part of the record in said case, a statement of facts which are agreed to by the attorney for said plaintiff and myself, as follows, viz:

It is agreed that the postal route-agents upon the cars of the
10 plaintiff were instructed by the Post-Office Department to run through between Philadelphia and Port Deposit, and to register the time of arrival and departure of the mails at Philadelphia and Port Deposit.

It is further agreed that in adjusting the pay for service between Baltimore and Philadelphia, upon which route the Philadelphia, Wilmington and Baltimore Railroad Company are the recognized carriers of the mails, the weights of all mails carried over the entire route, or between any intermediate points, including the mails carried in the Philadelphia and Baltimore Central Company's trains running between Philadelphia and Chester, were treated as belonging to that route, and were included in the aggregate weight of mails from which the average weight of mails per day carried the whole length of the route was obtained, upon which the rate of pay per mile per annum has been fixed. Therefore, the weight of mails carried between Philadelphia and Chester, in the trains running from Philadelphia via Chester to Port Deposit, have been included in the returns of the weight of mails on the route between Baltimore and Philadelphia.

The average weight of mails per day between Chester and Port Deposit was 639 pounds; the rate of pay allowed was $82 per mile. The inclusion of the 639 pounds per day in the weight of mails on the Philadelphia, Wilmington and Baltimore Railroad increased the pay on the route between Baltimore and Philadelphia $112 per annum, or $8 per mile, for the 14 miles. At this rate, the aggregate payment for the service from July 1, 1873, to March 7, 1877, is $404.88. If the mails carried in the cars of the Philadelphia and Baltimore Central Railroad Company between Philadelphia and Chester had been accepted as a separate and distinct service performed on an independent route, the compensation would have been $1,148 per annum, or $82 per mile. At this rate the payment for service from July 1, 1873, to March 7, 1877, would be $4,171.68.

On the part of the Post-Office Department—

D. M. KEY,
Postmaster-General
J. F. FARNSWORTH,
Attorney for Plaintiff.

X. The apartment cars and accommodations for route-agents were withdrawn from the postal service between Philadelphia and Port Deposit on the 8th March, 1877.

CONCLUSION OF LAW.

That on the foregoing facts the claimants are entitled to recover of the defendants the sum of twelve hundred and ninety-nine dollars and ninety-four cents.

11 IV.—*Opinion of the court.*

Davis, J., delivered the opinion of the court, April 1, 1878:

These cases are sent to this court by the Postmaster-General for decision under the authority derived from section 1063 of the Revised Statutes. It was assumed in the argument that the same principles may govern the two decisions. It is therefore found convenient to treat them together.

The Philadelphia, Wilmington and Baltimore Railroad is a trunk road, connecting Philadelphia with Baltimore by way of Chester and Wilmington.

At Chester, fourteen miles from Philadelphia, a line of railways fifty-nine miles in length, partly owned and entirely operated by the Philadelphia and Baltimore Central Railroad Company, joins the main line on the western side, and connects it with Port Deposit, to the westward, in Maryland.

At Wilmington, twenty-eight miles from Philadelphia, a line of railways ninety-seven miles in length, owned by the Delaware River
12 Railroad Company, and leased and operated by the Philadelphia, Wilmington and Baltimore Railroad Company, joins the main line on the eastern side, and connects it with Delmar, in the southern part of Delaware.

Thus three distinct avenues of traffic enter Philadelphia on the same rails: 1st, the line to Baltimore; 2d, the line to Port Deposit; and 3d, the line to Delmar. Continuous trains are run on these avenues from the common centre at Philadelphia, over common portions of the main trunk, and thence to Baltimore, to Port Deposit, and to Delmar. On each line the continuous train serves the stations on the common part of the line, as well as on its own exclusive line.

Each of the companies referred to has been for many years a carrier of the mails The main trunk of the Philadelphia, Wilmington and Baltimore road was known in the Post-Office Department as route No. 3501, and as such, prior to July 1, 1873, received mails and was paid for their transportation along the whole route from Philadelphia to Baltimore. The Delaware Railroad was known there as route No. 3401, and the company operating it received mails prior to July 1, 1873, and was paid for transporting them between Wilmington and Delmar. The roads operated by the Philadelphia and Baltimore Central Railroad Company were known there as route No. 2408, and that company, prior to July 1, 1873, received and transported mails between Chester and Deposit, and was paid for such transportation. Under the contracts and system which then prevailed, the Philadelphia, Wilmington and Baltimore Company carried the mails destined for Port Deposit and Delmar, respectively, to the proper junction on its own route, there delivering them to the proper branch road, and was paid accordingly.

On the first day of July, 1873, a new system came into operation, and changes took place in the mode of transporting mails between Philadelphia and Port Deposit and Delmar respectively.

By the act of March 3, 1873, the Postmaster General was directed to readjust the compensation to be paid on railroad routes, so as to secure transportation with frequency and speed in cars or in apartments in cars, properly lighted and warmed, so as to allow mail agents to travel in charge of mails and to distribute them. In order to induce the railroad companies to furnish this desirable but expensive accommodation, the Postmaster-General was directed thereafter to pay to such companies as might furnish it a yearly compensation to be determined by the aver-

age weight of mails per day carried over the whole route, the lower averages receiving a much greater proportionate sum than the higher ones. A mode was provided for ascertaining these averages by actual weight.

The Postmaster-General called upon the respective parties to these suits to furnish the service indicated by this act, and it was furnished.

On the 1st day of July, 1873, postal cars, or postal apartments in cars, according to the requirements of the service, in charge of mail-agents, commenced running in continuous trains both ways between Philadelphia and Baltimore, Philadelphia and Port Deposit, and Philadelphia and Delmar. This service was furnished from the 1st July, 1873, to the 7th March, 1877, both inclusive, when it was withdrawn from the Delmar and Port Deposit lines in consequence of disagreement with the government about pay. Each of these continuous trains did mail-service in a greater or less degree for the common portion of the route.

The Post Office Department, in its dealings with the claimants after July 1, 1873, treated the old routes as remaining unchanged under the new arrangements. The Philadelphia and Baltimore road was still re-
13 garded in its entirety as route No. 3501, and all mail matter passing over it, as well that on trains for Delmar and Deposit as that on its own local and through trains, went to swell the aggregate by which the average weight of through transportation of that company on its whole road was determined and paid. Route 3401 was still regarded as terminating at Wilmington, and transportation upon it was paid for up to that point only; and in like manner route No. 2804 was regarded and paid for as still terminating at Chester. If the mails to and from the branches had been taken out from the aggregate of the mails on the main line, and treated as carried to and from Philadelphia and the respective junction by independent lines, the compensation for their transportation would have been considerably increased, since their daily average over the main line would have been measured by a lower gradient in the scale of weight, with a corresponding higher gradient on the scale of pay.

It does not appear that either claimant objected to the department's theory of service before May 15, 1874. The Philadelphia, Wilmington and Baltimore Company then claimed to be paid for the transportation of the Delmar mails upon the theory that the service began at Philadelphia and not at Wilmington, and that the route was therefore from Philadelphia to Delmar. It also at the same time put in a claim for pay for transportation of the Port Deposit mails over its main line, founded upon a like theory. These claims were rejected by the department.

On the 4th December, 1875, the Philadelphia and Baltimore Central Company set up that it was entitled to compensation for its Port Deposit mail as a through mail from Philadelphia. This claim was in like manner rejected.

From the time when each claimant thus set up its claim, it does not appear that either acquiesced in the department's construction of the law and of the service rendered. The present suits are brought to enforce the pretentions thus set up in 1874 and 1875 respectively.

The defendants, on their side, contend that the term post route, as used in postal statutes, refers to routes established and recognized in the department. They say that "post-road" is the term used to designate a highway, whether by land or by water, over which any mail may lawfully travel; and that by "post-route" is signified a post road or roads, or portions thereof between definite limits, over which the transportation of mails usually forms the subject of a separate contract. When, there-

fore, the act of 1873 directed the Postmaster-General thereafter to readjust the compensation for transportation of mails on railroad routes, it intended to refer only to railroad routes recognized by the department, and did not authorize the extension of routes 2804 and 3401 to Philadelphia.

Prior to the consolidation act of June 8, 1872, the two terms appear to have been used indiscriminately in the statutes. That act apparently gives ground for the contention of the government. For the present purposes, however, it is of little consequence whether the alleged distinction does or does not exist. The act of 1873 is the controlling statute here, and the end sought for in the provisions of that act is plain. It aimed to secure the transportation of mails in closed cars, under charge of mail-agents, on continuous routes. It did not create a new postal route. It did not interfere with the right which the Postmaster-General had before the passage of the act to define and establish new postal routes, as the government defines that term, or to increase or curtail old ones. It left him free to arrange for such transportation of mails on existing routes, if possible. If the desired accomodations could not be secured on existing railroad routes, it did not prevent him
14 from creating new routes in order to secure them. Any other construction would strip the act of its efficiency.

The defendants further contend, if their argument is correctly understood, that when a railroad is once registered in the department as a route, it is impossible to locate another route over the same track. It is said, for instance, that route No. 2408 being one route, and route 3501 being another route, the Postmaster-General cannot extend 2408 over any portion of 3501, even though the company owning the former may actually perform mail-service over the latter.

This position is taken in apparent disregard of established usage in all parts of the country. Railroads were first projected for comparatively short distances from one centre of population to a neighboring centre; as, for instance, from Liverpool to Manchester, from Boston to Providence, from New York to New Brunswick, &c.; and it was then supposed that the public would use the new avenues as they used canals and highways. The termini of the early roads throve and increased under the stimulus. As they advanced in population, and as wealth correspondingly increased, the railroads in turn took a portion of the urban population to rural sites upon their lines. People whose means would no longer enable them to live with their accustomed comfort in the cities, where their business lay, were compelled to seek new homes in accessible localities in the neighboring country. Thus not only was the expense of obtaining terminal facilities in large cities greatly increased for new enterprises, but the cost of approach to such cities was also much enhanced. Under these circumstances smaller and less important roads in all sections of the country put in practice the idea with which railways were originally constructed, by contracting for the passage of their trains over the rails of existing roads at an agreed toll. Without some such arrangement it would have been impossible to construct many lateral roads. To regard a train of a railway company, equipped and manned by its own servants, and hauled by its own engines over another road to a terminal station in which it hires car-room and platform-room, as the train of a company whose rails it uses for a few miles and whose terminal facilities it contracts for, is no more reasonable than it would be to treat a stage-coach as belonging to the turnpike companies to which it pays toll for the use of their highways. When, in former days, the Albany and the Boston stage-coaches traveled over the

same highway from the Battery to the northern part of Manhattan Island, it would certainly have been thought unjust to maintain that the one mail-carrier was to be paid for the transportation of mails by the other because only one postal route over a postal road could be recognized by the department.

As between a railway company and the public, its service begins with its starting-point, whether on its own or a hired track. The service is as completely its own upon the hired track as upon its own proper rails, and it is a matter of indifference whether the right to use the rail comes from ownership, or from a lease of the road-bed, or by virtue of hiring an easement over the track.

The application of these principles to the case of the Philadelphia and Baltimore Central Railroad Company is not difficult. On the 1st July, 1873, that company, which before then had been carrying mails without an agent between Chester and Port Deposit in the ordinary way, placed at Philadelphia, at the request of the Postmaster-General, postal-car accommodations for the exclusive use of the mails between Philadelphia and Port Deposit, and of the mail-agent who was to accompany them. That car was put into a train of the Philadelphia
15 and Baltimore Central Company, and that train was hauled from Philadelphia to Port Deposit. A similar service was rendered on the same day from Port Deposit to Philadelphia, and these services were continued till March 8, 1877. Although it is not found as a fact (because not proved) who hauled between Chester and Philadelphia the cars and trains of the Baltimore Central Company, we are satisfied that such service was performed at the expense of that company.

On these facts it is clear that the Postmaster-General established a railroad post-route, in the government sense of the term, between Philadelphia and Port Deposit; that he requested the Philadelphia and Baltimore Central Railroad Company to carry the mails over that route with the improved accommodations and facilities contemplated by the act of 1873; and that the company complied in every respect with the request of the Postmaster-General. Thereby it became entitled to be compensated for that service according to the provisions of the statute.

The statute fixes a scale of prices and weights, and provides that the pay for the service is not to exceed those rates. It has not been necessary for us to consider what would be a reasonable rate in the present case, since it is admitted by the parties in the "agreed facts" that in case the route between Philadelphia and Port Deposit is to be regarded as an independent route, the compensation should be at the rate of $82 per mile per annum. The company has been paid at this rate for the transportation between Port Deposit and Chester. As between Chester and Philadelphia, it has already received through the Philadelphia, Wilmington and Baltimore Railroad Company pay for the whole period at the rate of $8 per mile. It took no exception to this rate of payment until December 4, 1875. Up to that time, therefore, it must be regarded as acquiescing in the department's ruling. After that date it was entitled to receive pay at the rate of $82 per mile for the distance between Philadelphia and Chester. Having been already paid $8 per mile, it is consequently entitled to recover in this action at the rate of $74 per mile per annum for mail-transportation 14 miles from December 4, 1875, to March 7, 1877, inclusive.

The Philadelphia, Wilmington and Baltimore Company's claim presents some different features. There the same company operated the branch road and the main line, and we are asked to decide that the same railroad company can operate two postal routes over the same

track. On careful consideration we see no objection to this conclusion, provided the routes are separate and the service distinct. They are so in this case. Before July 1, 1873, the company was serving the Delmar line from its main line, by transporting mails over the latter line to Wilmington, and there delivering them to the branch. On that day, at the request of the Postmaster-General, it changed this service, and gave the government postal cars, with accommodations for route-agents, and it ran them on separate Delmar trains both ways between Philadelphia and Delmar. As in the former case, so here, the Postmaster-General established a new postal route, and the company carried the mails on that route in the manner prescribed by that officer, and thereby it earned the right to be paid accordingly. It has been paid in full for the transportation between Wilmington and Delmar, and in part for the transportation between Wilmington and Philadelphia. Until May 15, 1874, it acquiesced in the ruling under which the part payment was made as a payment in full. It can therefore only recover in this action for transportation between Wilmington and Philadelphia after May 15, 1874, and for that only the difference between the rates which it is agreed by
the parties would have been paid had the route been regarded as
16 a separate route and the amounts already paid for such transportation. The parties agree that between May 15, 1874, and June 30, 1874, had the service between Philadelphia and Delmar been regarded as an independent service, the pay would have been at the rate of $2,940 per annum, while the sum actually received was at the rate of $364 per annum; that between July 1, 1874, and June 30, 1876, the pay for an independent service would have amounted to $8,232, while the sum actually received was at the rate of $24 per mile per annum for the 28 miles, amounting to $1,344; and that from June 30, 1876, to March 7, 1877, both rates were 10 per cent. less than during the previous two years.

The judgment of the court is that the claimant, the Philadelphia and Baltimore Central Railroad Company, recover of the defendants the sum of $1,299.94; and that the claimant, the Philadelphia, Wilmington and Baltimore Railroad Company, recover of the defendants the sum of $9,250.12.

17 V.—*Final judgment.*

At a court of claims held at the Capitol in the city of Washington, on the first day of April, A. D. 1878, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said The Philadelphia and Baltimore Central Railroad Company do have and recover of and from the United States the sum of twelve hundred and ninety-nine dollars and ninety-four cents ($1,299 $\frac{94}{100}$).

18 VI.—*Application for and allowance of an appeal.*

THE PHILADELPHIA AND BALTIMORE CENTRAL Railroad Company *vs.* THE UNITED STATES. } No. 11592.

From the judgment rendered in the above-entitled cause on the first day of April, 1878, in favor of the claimant, the claimant, by its attor-

ney, on the 29th day of June, 1878, makes application for and gives notice of an appeal to the Supreme Court of the United States.

JOHN F. FARNSWORTH,
Atty. for Claimant.

Filed June 29, 1878.

AT CHAMBERS.

Allowed.

C. D. DRAKE,
Chief Justice.

19 In the Court of Claims.

THE PHILADELPHIA AND BALTIMORE CENTRAL Railroad Company *vs.* THE UNITED STATES. } No. 11592.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the findings of fact by the court, and the conclusion of law thereon; of the opinion of the court; of the final judgment of the court; of the application of the claimant for the allowance of an appeal to the Supreme Court of the United States, and of the allowance of same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this seventh day of September, A. D. 1878.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) No. 242. The Philadelphia and Baltimore Central Railroad Company, appellant, vs. The United States. Court of Claims. Filed 9th October, 1878.

SUPREME COURT OF THE UNITED STATES.

The Philadelphia and Baltimore Central Rail Road Company vs. United States	Appeal from Court of Claims No. 528.

BRIEF for PLAINTIFF.

The facts in this case are set forth in the "Findings" of the Court of Claims.

From them it appears that the only question for this Court is, whether the plaintiff is *estopp'd* from claiming the compensation for transporting the mails to which it was entitled under the statute, *because it did not make its demands earlier.*

Prior to the first of July 1873 the plaintiff was carrying the mails between Chester and Port Deposit. On and after the 1st of July 1873 up to the 7th of March 1877, the Post Office Department required it to transport them fourteen miles further, viz: between Philadelphia and Chester, *by a continuous run, in a train running between Philadelphia and Port Deposit.* The department paid the plaintiff *only for the service between Chester and Port Deposit.*

The Act of Congress of 3rd of March 1873, under which this service was performed provides as follows, viz: The Postmaster-General is "authorized and directed to re-adjust the compensation hereafter to be paid for the transportation of mails on railroad routes, *upon the conditions* and at the rates *hereinafter mentioned*, to wit:—That the mails shall be conveyed with due frequency and speed; that sufficient and suitable room, fixtures and furniture, in a car or apartment, properly lighted and warmed, shall be provided for route agents, to accompany and distribute the mails: and that the pay per mile per annum shall not exceed the following rates, namely: —On routes carrying their whole length, an average weight of mails per day of two hundred pounds, fifty dollars; five hundred pounds, seventy-five dollars; one thousand pounds, one hundred dollars; one thousaud five hundred pounds, one hundred and twenty-five dollars; two thousand pounds, one hundred and fifty dollars; three thousand five hundred pounds, one hundred and seventy-five dollars; five thousand pounds, two hundred dollars; and twenty five dollars additional for every additional two thousand pounds — the average weight to be ascertained in every case by the actual weighing of the mails for such a number of successive working days, not less than thirty, at such times after June thirtieth, eighteen hundred and seventy-three, and not less frequently than once in every four years, and the result to be stated and verified in such form and manner as the Postmaster-General may direct." (17 *Stat. at Large. Page* 558.)

Between Chester and Philadelphia the plaintiff run its trains of Cars over the railroad of the Philadelphia, Wilmington and Baltimore Rail Road Company, which latter company was at the same time carrying the mails *upon its own trains* between Philadelphia and Baltimore.

The Post Office Department in adjusting compensa-

tion for these services from quarter to quarter, added the daily average weight of mails carried by the plaintiff to the mails carried by the Philadelphia, Wilmington and Baltimore Company between Chester and Philadelphia, the effect of which was to increase the pay of the latter company by one hundred and twelve dollars a year – or $8. per mile for the fourteen miles.

It is agreed by the Postmaster-General that the weight of mails carried by the plaintiff entitled it to $82.00 per mile per annum between Chester and Philadelphia, if the law authorized him to pay for the service, as an independent "*rail road route*" from Phladelphia to Port Deposit.

Upon this question I need only ask attention to the "*facts*," viz:

The same trains and mail cars run through from Philadelphia to Port Deposit.

The mail agents went through the whole distance, receiving and distributing mails at all the stations between those terminal points, and registering their arrivals and departures. *It was to all intents and purposes, in fact, a "railroad mail route"* "carrying the mails "its whole length."

Then the plaintiff was entitled by law to compensation for the *whole* distance, according to the average weight of mails carried.

As there was no evidence in the record that the plaintiff demanded compensation for this service, or protested against the manner in which the Department treated the matter, prior to the 4th of December 1875, the Court of Claims gave judgment *only* for the service after that date.

2 Has the plaintiff done, or suffered any thing to be done, whereby it has forfeited its right to compensation; or *estopp'd* itself from enforcing its legal rights.

The adjusting and determining the compensation was

all done at the Post Office Department without any assistance from the claimant or its concurrence.

The record does not show that any of the orders adjusting the pay were ever shown to the plaintiff, they were made for the *Auditor for the Department*, not for the railroad company.

It is not claimed that the action of the P. O. Department was in any manner influenced by any act of the plaintiff.

The plaintiff has made no declaration, and performed no acts which have induced the government to change its position, injuriously to itself, in its dealings with the plaintiff; at most, the plaintiff only submitted to supposed legal authority. Then there is no *estoppel*. "*Estoppel in pais* consists of acts or declarations, by which one induces another to alter, injuriously to himself, his previous position."

Brown *vs.* Wheeler. 17 Conn., 345.
Rangely *vs.* Spring, 21 Me., 130.
Cummings *vs.* Webster, 43 Ind., 192.

No *estoppel* can arise from an act done in submission to supposed legal authority.

Jersey City *vs.* State, 30 N. J. L., 521.

The act of a party, done in ignorance of his rights, does not estop him.

Newman *vs.* Edwards, 34th Pa. St., 32.

An estoppel in pais can only be set up as a means to prevent injustice.

Thomas *vs.* Bowman, 29th Ill., 426.

The Court of Claims gave judgment for the plaintiff for the sum of $1299.94. The judgment should have been for the sum of $3813.03.

J. F. FARNSWORTH,

Attorney for Plaintiff.

WASHINGTON, D. C.
J. D. MILANS, AGT. PRINTER, 603 7TH ST.

1879.

OFFICE SUPREME COURT U. S.
FILED
MAR 7 1881
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1880.

No. 242.

THE PHILADELPHIA AND BALTIMORE CENTRAL RAILROAD COMPANY, APPELLANTS,

vs.

THE UNITED STATES.

BRIEF FOR THE UNITED STATES.

The question is, whether the United States are liable to the appellants for service in carrying a mail between Philadelphia and Chester from July, 1873, to December, 1875, that service having been already recognized and paid for as done by the Philadelphia, Wilmington, and Baltimore Railroad Company.

The appellants control a road from Chester to Port Deposit, and also have a right, under contract, to run trains upon the road of the Philadelphia, Wilmington & Baltimore Company, between Chester and Philadelphia. Previously to March, 1873, the appellants carried a mail from Chester to Port Deposit, that route being then known as No. 2408, and subsequently as No. 8008.

After that time the Postmaster General required the mail for Port Deposit to be made up at Philadelphia, and, accordingly, postal cars, &c., were so run after July, 1873, by the

appellants, upon trains independent of the ordinary service of the Philadelphia, Wilmington & Baltimore Company. During all the time the *route* of the appellants was treated by the Post Office Department, so far as *recognition* and payments went, as being only from *Chester to Port Deposit;* in such matters the Philadelphia, Wilmington & Baltimore Company being treated as serving the route from Philadelphia to Chester, and for that reason being paid for the service done as above by the appellants. This was acquiesced in by the appellants up to December 4, 1875.

The court below held that they are bound by such aquiescence.

1. The claim of the appellants was originally for $3,885, (Record, folio 3.) They recovered judgment for $1,299.94, (folio 10.) This *appeal*, therefore, is brought to recover the difference between those amounts, viz., $2,585.06. Such is the sole "matter in controversy" (Rev. Stat., sec. 707) before this Court.

Upon this ground the appellees move to dismiss the appeal.

Among the twenty or more cases turning upon the value of the "matter in dispute," or *in controversy*, on appeal or writ of error, Gordon *vs.* Ogden, 3 Peters, 33, seems to be the only one in point here.

The different rule laid down in Knapp *vs.* Banks, 2 How., 73, was plainly *obiter*, and otherwise hasty, as is suggested by Walker *vs.* The U. S., 4 Wall., 163.

So also is the rule in Merrill *vs.* Petty, 16 Wall., 338.

Gordon *vs.* Ogden is cited as authority in the late cases; Olney *vs.* Falcon, 17 How., 19; Merrill *vs.* Petty, 16 Wall., 338, and The D. R. Martin, 91 U. S., 365.

In the absence of authoritative interpretation the meaning of the statute seems to be plain.

2. In other respects the opinion of the learned court below is relied upon as a full statement of the grounds upon which its judgment should be affirmed.

The claim as now existing is contradictory to accounts repeatedly *settled* between the parties, and there is nothing in the petition or findings to prevent those settlements from barring the claim.

Hager *vs.* Thompson, 1 Black., p. 93.
Stearns *vs.* Page, 7 How., p. 831.

S. F. PHILLIPS,
Solicitor General.